

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215186

DATE: October 29, 1984

MATTER OF: Singleton Contracting Corp.

DIGEST:

Late telegraphic bid modification addressed to a nonexistent TWX machine at agency's installation specified by the solicitation can be considered since the government's error in removing the TWX before bid opening without informing bidders was the paramount cause for the late receipt and the interests of the other bidders and the integrity of the procurement system will not be prejudiced if the late modification is considered.

Singleton Contracting Corp. protests the proposed contract award to Quality Electric Service, Inc. under invitation for bids (IFB) No. N62467-83-B-2467, issued by the Naval Air Station (NAS), Jacksonville, Florida for 480-volt substations. Singleton contends that the telegraphic bid modification, which would make Quality the low bidder if acceptable, was received after bid opening and should not be considered because the late receipt was not due to government mishandling after receipt at NAS.

We deny the protest.

The IFB specifically stated that "for telegraphic modification, the TWX is 8108271919." This TWX machine had been used primarily by the NAS Special Services office for personnel matters but had also been used by the procurement office to permit bidders to transmit bids and modifications. The machine, however, had been removed 8 days prior to February 10, 1984, when the IFB was issued.

Eleven bids were opened at 2:00 p.m. on March 29. At that time, NAS had received from Singleton a bid of \$500,000 and a telegraphic modification reducing its bid to

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\$272,000. NAS had also received a bid from Quality of \$750,000 but had not received a telegraphic modification reducing the price to \$249,480. Quality's modification had been transmitted to the TWX number listed in the IFB but could not be received there. Eventually, the message was routed to the Western Union central office in Montgomery, Alabama. That office sent the message by mailgram to the Special Services office at NAS. The mailgram arrived after the day of bid opening. The record also suggests that Western Union telephoned the message to its office on the base sometime after bid opening.

Because the modification was not mishandled after receipt at NAS, the Navy concedes that this situation does not come within the literal interpretation of the IFB's late bid modification provision which permits consideration of a late modification if it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation. The Navy contends, however, that an over-technical application of the rules should not be applied in this case because the late receipt was due to its error in including in the IFB authorization to send bid modifications to a TWX machine which did not exist. The Navy argues that in order to comply with the intent of the late bid modification provision, this late modification should be treated as having been received late due to government mishandling in the process of receipt at NAS. We agree.

An analysis of the Western Union codes on the mailgram confirmation copy indicates that the message amending the bid was called into Western Union on March 29, 1984 at 10:02 a.m. and that at 10:04 a.m. the message was entered into the Western Union system. The message contained the TWX number specified in the solicitation. Western Union advises that its computer at Morristown, New Jersey, transmitted the message to Jacksonville Florida at 10:09 a.m., and that at 10:17 a.m. Jacksonville determined that it could not transmit the message to the TWX machine identified in the solicitation. The message was routed to Montgomery, Alabama for further processing. Montgomery had the message by 10:30 a.m. These transmissions--to the TWX and to Montgomery--are accomplished by the use of punched tape generated by the Morristown computer.


Singleton contends that the late receipt was not due to government mishandling after receipt at NAS because it was not received at NAS until after bid opening and that it has not been shown that the late receipt was due solely to the listing of the number of a nonexistent TWX machine. Singleton points out that Quality could have hand delivered the modification or sent it by registered mail 5 days before bid opening and asserts that Quality assumed the risk of late receipt by waiting until the day of the bid opening before telegraphing the modification. In addition, Singleton contends that even if the TWX machine had been in place, it would be speculation to conclude that the modification would have arrived on time.

As the Navy points out, we have held that a literal interpretation of the late bid modification provision should not be used to reject a bid when to do so would contravene the intent and spirit of that provision. Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD ¶ 331. In the Hydro case, we held that a TWX machine malfunction which prevented transcription of a telegraphic bid several days prior to bid opening constituted mishandling by the government. The TWX machine had run out of paper, but before the sender knew of the malfunction, it had mailed to the agency an acknowledged copy of the telegraphic bid showing that it had been sent and received at the agency during the time that machine was without paper. Under these circumstances, we concluded that the bid could be accepted.

We have also noted that the regulations governing late bids are intended to insure that late bids will not be considered if there exists any possibility that the late bidder would gain an unfair advantage over other bidders. We have stated that the purpose of the rules governing consideration of late bids is to insure for the government the benefits of the maximum legitimate competition, not to give one bidder a wholly unmerited advantage over another by an over-technical application of the rules. CWC Inc., B-204445, Dec. 15, 1981, 81-2 CPD ¶ 475. The facts of this case strongly suggest to us that the paramount cause of the delay was the solicitation's designation of a nonexistent TWX terminal for the receipt of amendments to the bid. For that reason, we believe the Hydro Fitting rationale is applicable to this case.

Bidders, of course, must allow sufficient time for their bids and bid modifications to be received. We cannot agree with Singleton, however, that Quality assumed the risk of late delivery by waiting until the day of bid opening to send its modification. Rather, we think Quality and other bidders properly could rely on the IFB indication that TWX messages were feasible and acceptable. According to the Navy, Quality's bid modification was dispatched in sufficient time to reach the proper destination by 2:00 p.m. if the TWX machine had been operative. We have no reason to believe otherwise, since the message was in the Western Union system and ready to automatic transmission to the TWX almost 4 hours earlier.

Consideration of Quality's bid under these circumstances will not result in the type of unfair competition the late bid regulations are designed to prevent. Consequently, the protest is denied.

for 
Comptroller General
of the United States